1	ERIK BABCOCK (Cal. 172517) LAW OFFICES OF ERIK BABCOCK 717 Washington St., 2d Floor Oakland, CA 94607 (510) 452-8400 Tel. (510) 452-8405 Fax erik@babcocklawoffice.com JAMES R. STEVENS WOLF, PENNELLA & STEVENS, LLP James R. Stevens, SBN 286646 717 Washington St., 2d Floor Oakland, CA 94607 (510) 451-4600 Tel (510) 451-3002 Fax james@wps-law.com	
2		
4		
5		
6		
7		
8	Attorneys for Defendant LUKE BRUGNARA	
9	HORE BROGNARA	
10	IN THE UNITED STATES DISTRICT COURT	
11	FOR THE NORTHERN DISTRICT OF CALIFORNIA	
12	2 UNITED STATES OF AMERICA, NO	. CR 14-00306 WHA CR 08-00222 WHA
13	Plaintiff,	
13	5	
14	MEM DEF	ORANDUM REGARDING ENDANT'S BEHAVIOR AT
	V. LUKE BRUGNARA, MEM DEF TRI	ENDANT'S BEHAVIOR AT
14 15	V. LUKE BRUGNARA, Defendant.	ENDANT'S BEHAVIOR AT
14 15 16	V. LUKE BRUGNARA, Defendant.	ENDANT'S BEHAVIOR AT
14 15 16 17	MEM DEF TRI Defendant.	ENDANT'S BEHAVIOR AT AL
14 15 16	V. LUKE BRUGNARA, Defendant. This memorandum is in response to	ENDANT'S BEHAVIOR AT AL the Court's request for
14 15 16 17 18	MEM DEF TRI LUKE BRUGNARA, Defendant. This memorandum is in response to briefing on Luke Brugnara's potential b	ENDANT'S BEHAVIOR AT AL the Court's request for
14 15 16 17 18	MEM DEF TRI LUKE BRUGNARA, Defendant. This memorandum is in response to briefing on Luke Brugnara's potential be 306.)	ENDANT'S BEHAVIOR AT AL the Court's request for ehavior at trial. (Dkt.
14 15 16 17 18 19 20	V. LUKE BRUGNARA, Defendant. This memorandum is in response to briefing on Luke Brugnara's potential b 306.) Mr. Brugnara has the right under t	the Court's request for ehavior at trial. (Dkt.
14 15 16 17 18 19 20 21	V. LUKE BRUGNARA, Defendant. This memorandum is in response to briefing on Luke Brugnara's potential b 306.) Mr. Brugnara has the right under t the Constitution "to personal presence	the Court's request for ehavior at trial. (Dkt. he Due Process Clause of at all critical stages" of
14 15 16 17 18 19 20 21 22	LUKE BRUGNARA, Defendant. This memorandum is in response to briefing on Luke Brugnara's potential be 306.) Mr. Brugnara has the right under the Constitution "to personal presence his prosecution. Rushen v. Spain, 464	the Court's request for ehavior at trial. (Dkt. he Due Process Clause of at all critical stages" of U.S. 114, 117-18 (1983)

against the loss" of the defendant's constitutional right to be present during trial. *Illinois v. Allen*, 397 U.S. 337, 343 (1970).

If the Court finds Mr. Brugnara is being disruptive during trial, the jury should be excused and the Court should admonish Mr. Brugnara about his behavior outside of the presence of the jury. Mr. Brugnara should be given the opportunity to correct his behavior and remain in the courtroom. If the Court finds that Mr. Brugnara must be removed because he is being disruptive, the Court should allow Mr. Brugnara to agree to follow the courtroom rules at the next recess. If Mr. Brugnara agrees to abide by the rules and to refrain from behaving in a disruptive manner, the Court should allow Mr. Brugnara to personally attend trial once more.

The defense proposes the following jury instruction be given at the outset of trial: "The actions, spoken words, facial expressions, or any other behavior of any individual not currently testifying is not evidence in this case and you are not to consider it when deciding whether Mr. Brugnara has committed the offenses with which he is charged. This includes the behavior of Mr. Brugnara unless he is on the witness stand testifying."

In the event that the Court deems it necessary to remove Mr. Brugnara from the courtroom during trial, we propose the

Case3:14-cr-00306-WHA Document310 Filed01/23/15 Page3 of 3

following jury instruction: "For reasons that do not concern you, Mr. Brugnara will not be present for this stage of the trial. Do not speculate as to the reasons for his absence. Mr. Brugnara's absence is not evidence and may not be considered by you in determining whether the government has proven the offenses charged beyond a reasonable doubt. You must base your decision solely on the evidence presented at trial."

Respectfully submitted,

/s/

James R. Stevens Erik Babcock Attorneys for Defendant LUKE BRUGNARA